



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Varga Enterprises, Inc.

File: B-228043

Date: October 15, 1987

DIGEST

1. Where agency rebuts protest allegations in administrative report and protester does not expressly continue those allegations in its comments on the report, the allegations are deemed abandoned and will not be considered.

2. Allegation that awardee cannot perform at its low bid price does not provide a sustainable basis of protest; submission of below-cost bid on fixed-price contract provides no basis for challenging award to responsible bidder.

DECISION

Varga Enterprises, Inc. protests the award of a contract to DOD Contracts, Inc. under invitation for bids (IFB) No. S2880100, issued by the Mine Safety & Health Administration, United States Department of Labor.

We dismiss the protest.


The protester initially contended that DOD Contracts lacks required experience, and cannot meet the IFB's performance requirements because it bid below cost. The agency responded in its report that DOD Contracts was found to be a responsible contractor based on a preaward survey, and that there was no other basis for withholding award to that firm. In its comments on the report, Varga reiterated only its argument that DOD Contracts would be unable to perform at its bid price.

Since Varga, in its comments on the agency report, does not continue its argument that DOD Contracts is not qualified to perform, this aspect of the protest is deemed abandoned. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

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As for Varqa's allegation that DOD Contracts cannot perform at its bid price, the submission of an allegedly below-cost bid is not illegal and provides no basis for challenging the award of a firm, fixed-price contract to a responsible contractor, since such a contract is not subject to adjustment based on the contractor's cost of performance and places no obligation on the contracting agency to pay more than the price at which contract award is made. See ORI, Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266. To the extent Varqa argues that, based on DOD Contracts' low bid, the firm should not have been found qualified to perform, our Office will not review affirmative determinations of responsibility unless the protester shows possible fraud or bad faith on the part of the contracting officials, or alleges that the solicitation contains definitive responsibility criteria that have been misapplied. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1987). These exceptions do not apply here.

The protest is dismissed.


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